

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 20, 2001

**STATE OF TENNESSEE, EX REL. ROSE PARKER v.
CHARLES PARKER**

**Appeal from the Circuit Court for Davidson County
No. 93D 2018 Muriel Robinson, Judge**

No. M2001-01232-COA-R3-CV - Filed October 16, 2002

The State of Tennessee, having provided child support services to Rose Parker pursuant to Title IV-D of the Social Security Act, 42 USC §§ 651-669, appeals the action of the trial court in retroactively reducing the child support obligations of Charles Parker by terminating his obligation to his two oldest children as of the date of their respective emancipation rather than making such modification effective only upon the filing of petitions by Mr. Parker to terminate his obligations. We are compelled by Tennessee Code Annotated section 35-6-101(a)(5)(2001) to reverse.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed

WILLIAM B. CAIN, J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., and PATRICIA J. COTTRELL, J., joined.

Paul G. Summers, Attorney General & Reporter; and Kim Beals, Assistant Attorney General, Nashville, Tennessee, for the appellant, State of Tennessee *ex rel.* Rose Parker.

Charles Parker, Nashville, Tennessee, Pro Se.

OPINION

Rose Parker and Charles Parker, parents of four minor children, were divorced in September of 1994 with Mr. Parker ordered to pay \$135.00 per week in child support for the four minor children. The oldest child, Macio Parker, dropped out of school at 17 years of age and turned 18 on October 23, 1996. The second oldest child, Monica Parker, turned 18 on May 18, 1998 and graduated from high school in June of 1998. Mr. Parker; however, did not file his petition to modify child support because of the emancipation of Macio until January 24, 1997, and did not file a petition for modification of child support because of the emancipation of Monica until January 11, 2001.

The trial court, by judgment entered May 15, 2001, found in part:

The Court finds that the Respondent has a worker compensation claim in the Fifth Circuit Court of Davidson County, Docket #99C-2951 of which \$21,687.99 has been seized pursuant to a Notice of Seizure of Assets previously filed by the local IV-D office pursuant to T.C.A. 36-5-905 on December 15, 2000; said funds are about to be paid to the Central Child Support Receipting Unit. The Court further finds that the Petition is alleging child support arrears of \$20,246.64 plus interest of \$4,193.85 for a total of \$24,440.49 (Exhibit 1). The Respondent is alleging that he is entitled to a retro-active modification of the Court's previous order to pay \$135.00 per week as two of the four children for whom support was ordered have emancipated; Macio emancipated on October 23, 1996 and Monica emancipated June 1, 1998.

The Court finds that both parties had a duty as each child emancipated to come before the Court and seek a modification to have the correct amount ordered. The Court finds that although the Respondent did not file for a modification of his child support obligation until January 11, 2001, a retro-active modification of the Court's previous order is warranted. The Court finds that based upon the Respondent's testimony that he was making \$9.50 per hour in October, 1996, beginning October 24, 1996 child support is reduced to \$551.00 per month for the remaining three children. When the second child emancipated June 1, 1998 child support is reduced to \$430.00 per month.

The Court finds that based upon calculations in court the Respondent is in arrears \$14,833.67 plus the accumulated interest. However, the Court finds based upon the late filed exhibit the IV-D office was instructed to make, that the Respondent owes \$14,475.61 in child support arrears plus \$3,836.91 in interest for a total of \$18,312.52 (Exhibit 2). The State of Tennessee shall release \$18,312.52 and, after deducting the collection fee, shall deposit any remaining funds with the Circuit Court Clerk to be placed in an interest bearing account until this matter is reviewed by the Court of Appeals.

The trial court erred in reducing child support for Macio and Monica retroactively to the dates of their respective emancipation rather than to the respective dates upon which petitions were filed by Mr. Parker seeking a reduction based upon emancipation.

The action of the trial court violates the provisions of Tennessee Code Annotated section 36-5-101(a)(5)(2001) which provides:

Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state. Such judgment shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties. If the full amount of child support is not paid by the

date upon which the ordered support is due, the unpaid amount is in arrears and shall become a judgment for the unpaid amounts and shall accrue interest from the date of the arrearage at the rate of twelve percent (12%) per annum. All interest which accumulates on arrearages shall be considered child support. Computation of interest shall not be the responsibility of the clerk.

(emphasis added) This statute is plain and unambiguous and provides for no exceptions. This Court has observed:

The authority of the courts to make retroactive changes in a non-custodial parent's child support obligation changed approximately five months after the entry of Mr. Goode's and Ms. McAllister's final divorce decree. At the time of the negotiation of the parties' property settlement agreements and the entry of the divorce decree, Tenn. Code Ann. § 36-5-101(a)(1) (Supp. 1986) (Amended 1987) permitted trial courts to make retroactive modifications in child support in certain limited circumstances. Accordingly, it was generally understood at that time that obligor parents could assert equitable defenses to claims for past due child support. *See Smith v. Smith*, 643 S.W.2d 320, 323 (Tenn. 1982); *Nissen v. Miller*, 642 S.W.2d 428, 430-31 (Tenn. Ct. App. 1982).

During its 1987 session, the General Assembly removed Tenn. Code Ann. § 36-5-101(a)(1)'s retroactive modification feature in order to avoid losing millions of dollars in federal welfare funds. Act of March 27, 1987, ch. 39, § 1, 1987 Tenn. Pub. Acts 47; *Rutledge v. Barrett*, 802 S.W.2d at 606. As a result of this amendment, Tenn. Code Ann. § 36-5-101(a)(5) specifically provides that a child support judgment "shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties."

State ex rel. McAllister v. Goode, 968 S.W.2d 834, 837 (Tenn. Ct. App. 1997).

After quoting the provisions of section 36-5-101(a)(5) of the Code, Presiding Judge Goddard, for the Eastern Section of the Court of Appeals, observed:

Additionally, there are no equitable defenses available to Mr. Davis. *Rutledge v. Barrett*, 802 S.W.2d 604 (Tenn. 1991). While denying Mr. Davis the opportunity to raise equitable defenses in this situation does seem harsh, it was the intent of the General Assembly and the Tennessee Supreme Court to require all obligor parents to comply fully with lawful child support orders, which outweighs the seemingly unfair results in cases such as the one before us. *State of Tennessee v. Goode*, 968 S.W.2d 834 (Tenn. Ct. App. 1998).

Davis v. Davis, No. E1999-02737-COA-R3-CV, 2001 WL 1131772, at * 5 (Tenn. Ct. App. Sept. 25, 2001).

Relief from the harsh provisions of statutes, having no constitutional infirmity, properly lies within the legislative realm, and this Court is powerless to change a statute. The judgment of the trial court is reversed and remanded with instructions to enter judgment in conformity with this opinion.

Costs of this appeal are assessed against Appellee.

WILLIAM B. CAIN, JUDGE